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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 231212-0300]

RIN 0648-BM73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Emergency Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final temporary rule; emergency action.

SUMMARY: NMFS issues this final temporary rule to promulgate emergency measures, due to recently discovered circumstances that present serious conservation issues for the greater amberjack stock in the Gulf of Mexico (Gulf). As requested by the Gulf of Mexico Fishery Management Council (Council), NMFS issues this final temporary rule to reduce the Gulf greater amberjack commercial trip limit. The final temporary rule will be effective for 180 days unless superseded by subsequent rulemaking. The purpose of this emergency action is to decrease the likelihood of exceeding the commercial catch limits and extend the 2024 commercial fishing season.

DATES: This temporary rule is effective January 1, 2024,

through June 15, 2024.

ADDRESSES: Electronic copies of the documents in support of this final temporary rule for emergency action, which includes the Council's letter to NMFS requesting the emergency action may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/emergency-rule-implement-reduced-commercial-trip-limits-gulf-mexico-greater-amberjack>.

FOR FURTHER INFORMATION CONTACT: Dan Luers, telephone: 727-824-5305, or email: Daniel.Luers@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and approved and implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Section 305(c) of the Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations (16 U.S.C. 1855(c)).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended

to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Gulf greater amberjack has been under a rebuilding plan since 2003 (68 FR 39898, July 3, 2003). However, the stock has not rebuilt as expected and NMFS has implemented several revisions to the rebuilding plan. The most recent revision occurred in response to the Southeast Data, Assessment, and Review (SEDAR) 70 assessment for Gulf greater amberjack, which was completed in November 2020 and indicated that the Gulf greater amberjack stock continued to be overfished and undergoing overfishing, but could rebuild by end of the current rebuilding time (2027) with reduced yields. Therefore, the Council developed and NMFS approved and implemented Amendment 54 to the FMP, which substantially reduced the Gulf greater amberjack catch limits. NMFS published the final rule reducing the catch limits on June 15, 2023 (88 FR 39193). On June 18, 2023, NMFS prohibited further commercial harvest for the 2023 fishing year because commercial landings had exceeded the reduced commercial annual catch target (ACT) and annual catch limit (ACL), which are 93,930 lb (42,606 kg), round weight, and 101,000 lb (45,813 kg), round weight, respectively (88 FR 40121, June 21, 2023).

The Gulf greater amberjack commercial accountability measures (AMs) require a closure of the sector when commercial landings reach or are projected to reach the commercial ACT (commercial quota) (50 CFR 622.41(a)(1)). In addition, if commercial landings exceed the commercial ACL, NMFS is required to reduce both the commercial ACL and the commercial ACT for Gulf greater amberjack in the year following an overage of the commercial ACL, by the amount of any commercial ACL overage (50 CFR 622.41(a)(1)(ii)). Because 2023 commercial landings exceeded the newly implemented commercial ACL, NMFS reduced the commercial ACL and ACT for the 2024 fishing year, by the amount of the 2023 commercial ACL overage (88 FR 80995, November 21, 2023), which was 35,280 lb (16,003 kg), round weight.

At its October 2023 meeting, the Council approved a framework action to modify the Gulf greater amberjack recreational fixed closed season and the commercial trip limit (Framework Action). Within the Framework Action, the Council recommended reducing the current commercial trip limit to 7 fish as a result of the substantial catch limit reductions implemented with Amendment 54 in order to extend the commercial fishing season. As described in the Framework Action, a trip limit of 7 fish is approximately equal to 210 lb (95 kg), gutted weight; 218 lb (99 kg), round weight. The current commercial trip limit for Gulf greater amberjack is 1,000 lb (454 kg), gutted weight;

1,040 lb (474 kg), round weight, until 75 percent of the commercial quota (commercial ACT) is reached. After 75 percent of the commercial quota is reached or projected to be reached, the trip limit is reduced to 250 lb (113 kg), gutted weight; 260 lb (118 kg), round weight.

The 2024 commercial fishing season opens on January 1 and with the current trip limit, NMFS projects that commercial landings would reach the reduced commercial ACT in early February, requiring a closure for the remainder of the year. If the 7-fish trip limit were in place by January 1, 2024, NMFS projects the commercial fishing season would be open through the end of February when a 3-month seasonal closure begins, and re-open for part of June when the season reopens June 1.

Council Emergency Action Request

At its October 2023 meeting, the Council discussed concerns raised by its Reef Fish Advisory Panel about the impact of the required reduction to the 2024 commercial catch limits as a result of landings exceeding the ACL in 2023. The Council expressed concern about NMFS' ability to constrain landings to the reduced catch limits when the commercial season opens in January and the potential for additional commercial overages in 2024 further reducing harvest for 2025. The reduced commercial trip limit in the Framework Action, if implemented, would not be effective until spring of 2024. Therefore, the Council requested that

NMFS implement an emergency action to reduce the Gulf greater amberjack commercial trip limit to 7 fish effective January 1, 2024. The Council and NMFS expect this lower trip limit to benefit the greater amberjack stock by increasing the duration of the open season, which is expected to result in fewer regulatory discards (*i.e.* discards required after the quota has been reached). The reduced trip limit is also expected to shift the commercial greater amberjack harvest to an incidental catch only fishery for fishermen who currently target Gulf greater amberjack commercially under a higher trip limit, reducing the likelihood of race-to-fish (derby) fishing, which will allow NMFS to better determine when the commercial ACT will be reached and prohibit further harvest during the fishing year.

Criteria and Justification for Emergency Action

NMFS' *Policy Guidelines for the Use of Emergency Rules* (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: "(1) Result from recent, unforeseen events or recently discovered circumstances; and (2) Present serious conservation or management problems in the fishery; and (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of

the impacts on participants to the same extent as would be expected under the normal rulemaking process.” NMFS issues this emergency action in compliance with these guidelines to prevent serious conservation issues to the stock that would increase the probability of not meeting the rebuilding timeline of 2027.

With respect to the first criterion, the recently discovered circumstance is the extent of the overage of the commercial ACL in 2023 and the impact the required commercial ACT overage adjustment (payback) will have on the 2024 season. The Gulf greater amberjack stock has been under a rebuilding plan since 2003. The recent change to the rebuilding plan in Amendment 54 was implemented in June 2023 and resulted in a significant reduction in the catch limits. This reduction caused the commercial ACL to be exceeded earlier in the 2023 fishing year, thus requiring a commercial ACL and ACT payback and lower commercial catch levels in 2024. At the time of the Council’s request for the emergency action, it appeared that the required reduction in the commercial catch limits would result in a 2024 commercial season as short as 2 weeks. After further review, NMFS determined that if no change were made to the trip limit, the commercial season would likely close at the end of January or beginning of February. However, there is substantial uncertainty in the projections because it is unclear whether the shorter season will induce fishermen to

increase effort. NMFS expects the reduced trip limit implemented through the emergency action to slow harvest by lowering the financial incentive to target greater amberjack and engage in derby fishing, and increase the length of the 2024 commercial fishing season by 4-5 weeks. In combination with the fixed seasonal closure, which occurs March through May, commercial fishing could occur from January through February and then into June.

The second criterion, which requires a serious conservation or management problem in the fishery, is satisfied because the uncertainty associated with projecting when to close fishing under the current trip limit increases the likelihood of exceeding the reduced ACT and ACL, which were required to account for the excess commercial harvest in 2023. The Gulf greater amberjack stock has been overfished since the first assessment in 2000 and various plans that have been implemented to rebuild the stock have not been successful. Amendment 54 significantly reduced catch levels to rebuild the stock by the end of the current rebuilding period in 2027. Harvest in excess of these catch limits increases the probability of not meeting the established rebuilding time. NMFS expects the reduced commercial trip limit to eliminate trips targeting greater amberjack because those trips would be economically infeasible. This will discourage derby fishing and increase the length of the fishing season,

which would decrease regulatory discards and allow NMFS more time to determine when to prohibit further harvest in 2024 so as to not exceed the catch limits.

To address the third criterion, NMFS has determined that because the next commercial fishing season opens January 1, 2024, the immediate benefits of reducing the trip limit through an emergency action outweigh the value of advance notice and public comment. By foregoing the notice and comment rulemaking, this emergency action will be able to fulfill its intent by slowing commercial harvest, eliminating the incentive to engage in derby fishing, which can result in unsafe fishing conditions, and reducing the likelihood of exceeding the reduced catch limits.

Emergency Measures

This final temporary rule revises the commercial trip limit for Gulf greater amberjack. It reduces the Gulf greater amberjack commercial trip limit to 7 fish from the current trip limit of 1,000 lb (454 kg), gutted weight, 1,040 lb (472 kg), round weight, with a step down in the trip limit to 250 lb (113 kg), gutted weight, 260 lb (118 kg), round weight, when 75 percent of the commercial ACT has been landed. The commercial trip limit will be effective for 180 days after publication in the **Federal Register**, as authorized by section 305(c) of the Magnuson-Stevens Act, or until superseded by another Federal action.

This temporary final rule for emergency action will not be extended because NMFS expects the commercial ACT to be reached and the 2024 commercial season to be closed prior to the expiration of this rule. If this temporary rule were to expire prior to the commercial closure, fishing that could occur until the quota was reached would be under the reduced limit (stepdown) of 250 lb (113 kg), gutted weight, per trip (equivalent of approximately 8 fish). Therefore, an extension of this temporary final rule will be unnecessary.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator (AA) for Fisheries, NOAA has determined that this emergency action is consistent with the Magnuson-Stevens Act, the FMP, and other applicable law. This action is being taken pursuant to the emergency provisions of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review.

The AA finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b) (B). Providing prior notice and opportunity for public comment on this action would be contrary to the public interest.

In June 2023, NMFS implemented Amendment 54, which significantly reduced the Gulf greater amberjack catch

levels in order to rebuild the stock. Commercial landings exceeded the 2023 commercial ACL, requiring a reduction of the commercial ACT and ACL for the 2024 fishing year. In October 2023, the Council voted to request that NMFS implement this emergency action to reduce the commercial trip limit as of January 1, 2024, consistent with its recommendation in the Framework Action approved at that same meeting. NMFS received the Council's request for emergency action on November 3, 2023, and therefore could not have acted sooner.

This change in the commercial trip limit requires immediate implementation. If NMFS were to provide prior notice and comment, NMFS would be unable to implement the change by January 1, 2024, which would increase the likelihood of exceeding the reduced catch limits that are necessary to rebuild the Gulf greater amberjack stock.

Maintaining the current 1,000 lb (454 kg), gutted weight, trip limit for the 2024 fishing year may induce fishermen who still target Gulf greater amberjack to increase their rate of harvest when the commercial season opens on January 1, 2024. This would increase the uncertainty for NMFS in projecting when to prohibit further commercial harvest and result in commercial landings in excess of the 2024 catch limits, which increases the probability of not meeting the established rebuilding time. The shorter open season that would occur under the 1,000 lb

(454 kg), gutted weight, trip limit, would also increase the number of days fishermen who incidentally catch Gulf greater amberjack must discard the fish. Therefore, the reduced commercial trip limit must be implemented immediately and prior notice and opportunity for public comment would be contrary to the public interest.

The need to implement these measures immediately for the reasons stated above also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the rule.

This final temporary rule for emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing season, Greater amberjack, Gulf of Mexico, Reef Fish.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 12, 2023.

Samuel D. Rauch, III

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends
50 CFR part 622 as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.43:

- a. Suspend paragraphs (a) (1) and (2); and
- b. Add paragraph (a) (3).

The addition reads as follows:

§ 622.43 Commercial trip limits.

* * * * *

(a) * * *

(3) Until the commercial quota specified in §
622.39(a) (1) (v) is reached - 7 fish. See § 622.39(b) for
the limitations regarding greater amberjack after the quota
is reached.

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